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#7
Election
8-13-02
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IN RE APPLICATION OF: :
Takuji MATSUMOTO, et al. : EXAMINER: SEFER, A.
SERIAL NO.: 09/986,004 :
FILED: November 7, 2001 : GROUP ART UNIT: 2826
FOR: SEMICONDUCTOR DEVICE :
AND METHOD OF
MANUFACTURING THE
SAME

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

In response to the Election of Species Requirement dated July 10, 2002, Applicants provisionally elect with traverse Species 1, depicted in Figures 3-8, and identify Claims 1-3 and 8-12 as readable on the elected species.

Applicants respectfully traverse the election requirement for several reasons.

First, the outstanding Official Action fails to state any basis whatsoever in support of the restriction requirement. This violates MPEP § 816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given

In the absence of any annunciated basis, it is respectfully submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Secondly, MPEP § 806.04(f) requires: "Claims to be restricted to different species must be mutually exclusive" The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics, and this failure provides a further basis for traversing the election requirement.

Finally, MPEP § 803 states: "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

The Claims of Species 1-8 appear to be part of an overlapping search area. Therefore, Applicants traverse the outstanding Election of Species Requirement on the grounds that a search and examination of the entire application would not place a serious burden on the Examiner.

Accordingly, it is respectfully requested that the requirement to elect a single species be withdrawn, and that a full examination on the merits of Claims 1-20 be conducted.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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GJM/SNS/KDP/brf

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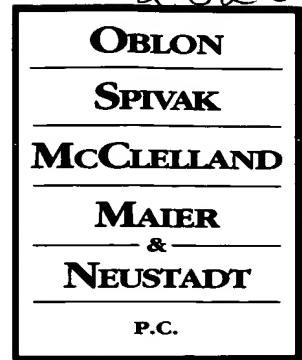


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Serial No: 09/986,004
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AND METHOD OF
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SIR:

Attached hereto for filing are the following papers:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Our check in the amount of \$0.00 is attached covering any required fees. In the event that any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 CFR 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is attached.

Respectfully submitted,

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